

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 97-0270 ST

Sales and Use Tax

For Periods Ending 12/31/94 And 12/31/95

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales and Use Tax — Warranties

Authority: 45 IAC 2.2-5-14

Taxpayer protests the imposition of sales/use tax on warranties and envelopes placed inside caskets.

II. Sales and Use Tax — Pecan Flooring

Authority: 45 IAC 2.2-5-8

Taxpayer protests the imposition of sales/use tax on pecan flooring used in the manufacturing facility.

III. Tax Administration — Penalty

Authority: IC 6-8.1-10-2.1

Taxpayer protests the imposition of a ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayer manufactures steel burial caskets. Steel burial parts are stamped (using a large press operation), assembled and painted. Cloth interiors are sewn and installed and a warranty with envelope is placed inside the finished product prior to shipment.

Taxpayer utilizes pecan floor sections around the large presses. The floor sections are designed to be oil-resistant and able to withstand the weight of the raw materials and finished products. The sections can be rearranged around the presses, depending upon the set-up of the machines, to allow the employees access to the machines which are set in deep canals. Additional relevant facts will be provided below, as necessary.

I. Sales and Use Tax — Warranties

DISCUSSION

Taxpayer protests the imposition of sales/use tax on the purchases of the warranties and envelopes placed inside the finished caskets. Taxpayer argues the warranties are incorporated as a material part of the manufactured product. The Department recognizes the warranties and envelopes are not "physically incorporated into and become a component part of the finished product" as required by Department Regulation 45 IAC 2.2-5-14, but the warranties are integral to the sales themselves. The Department analogizes these warranties and envelopes with owner's manuals which are allowed a sales tax exemption.

FINDING

Taxpayer's protest is sustained. Taxpayer has provided a copy of the audit report with the warranty and envelope purchases highlighted.

II. Sales and Use Tax — Pecan Flooring

DISCUSSION

Taxpayer protests the imposition of use tax on the pecan flooring utilized around the large presses in the manufacturing process. Taxpayer argues the floor should be exempt pursuant to Department Regulation 45 IAC 2.2-5-8(c) which states:

The state gross retail tax does not apply to purchases of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the production process provided that such machinery, tools, and equipment are directly used in the production process; i.e., they have an immediate effect on the article being produced if it is an essential and integral part of an integrated process which produces tangible personal property.

Taxpayer claims the flooring, which allows employees access to the large presses that are set in deep canals, should be exempt as having an immediate effect on the caskets being produced.

The Department finds the flooring is not directly used in the production process. "The fact that particular property may be considered essential to the conduct of the business of manufacturing because its use is required either by law or by practical necessity does not itself mean that the property 'has an immediate effect upon the article being produced.'" 45 IAC 2.2-5-8(g).

The Department does not find the pecan floor to be a component part of the presses used in the manufacturing

process.

FINDING

Taxpayer's protest is denied.

III. Tax Administration — Penalty

DISCUSSION

Taxpayer protests the imposition of the ten percent negligence penalty. Taxpayer claims to be a complying taxpayer and argues no negligence in its failure to pay the above sales/use taxes.

"If a person subject to the penalty imposed under this section can show that the failure to... pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty." IC 6-8.1-10-2.1.

Taxpayer has proven to the Department's satisfaction that the failure to pay sales/use tax on the above stated issues was not due to willful neglect.

FINDING

Taxpayer's protest is sustained.